

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. /14/1991 with MA/67/92
TAX NO.

DATE OF DECISION 29 th March 2000

A.K.Chandaniya

Petitioner

Mr. K.K.Shah

Advocate for the Petitioner [s]

Versus

Union of India & anr.

Respondent

Mr. N.S.Shevde

Advocate for the Respondent [s]

CORAM

The Hon'ble Mr.

V. Ramakrishnan, Vice Chairman

The Hon'ble Mr.

A.S. Sanghavi, Member (J)

JUDGMENT

1, Whether Reporters of Local papers may be allowed to see the Judgment ?

2, To be referred to the Reporter or not ?

3, Whether their Lerdships wish to see the fair copy of the Judgment ?

4, Whether it needs to be circulated to other Benches of the Tribunal ?

A.K.Chandaniya
Rly. Q.No. 103/B
Kothi Compound
Rajkot- 360 001

Applicant

//Advocate: Mr. K.K.Shah //

Versus

(1) Union of India
Notice to be served through
General Manager
Western Railway
Churchgate, Bombay- 400 020.

(2) Divisional Railway Manager (E)
Divisional Office
Western Railway
Kothi Compound
Rajkot.

Respondents

// Advocate: Mr. N.S. Shevde //

JUDGEMENT

IN

Dated 29th March 2000

O.A./14/1991
with MA/67/92

Per Hon'ble Mr. V. Ramakrishnan, Vice Chairman:

M.A./67/92 is allowed.

The applicant a Stenographer in the Railways has approached the Tribunal seeking a direction that his pay should be stepped up at par with his junior Shri George Kutty and he should be given consequential benefits and arrears.

2. We have heard Mr. K.K.Shah for the applicant and have also gone through the materials on record.

3. The applicant joined the Railways as Typist in 1972. He claims that he was senior to George Kutty who was also posted as Typist. His name is at Sr.No.251 whereas it was Sr.No.302 in the case of George Kutty. He says that he also joined some months earlier to Kutty. The applicant was promoted as Steno. in the scale 330-560 by D.R.M. Rajkot as per his memorandum of 9.10.1980. George Kutty his junior was given ad hoc promotion in the scale 330-560 on 26.5.1977. The applicant says that he was not aware of such ad hoc promotion. There is also an allegation that even though he had asked for being considered for the post of 330-560 earlier, he was not called for selection in the year 1975 and as he was posted in Survey and Construction department he was not called whereas persons who are on the establishment side of the Rajkot Division were called for the selection. The applicant was promoted to the scale of 330-560 on ad hoc basis by Memo. dated 9.10.80. Both the applicant and Kutty were promoted to (revised scale (Rs.1200-2040) the scale of Rs.330-560 on regular basis in 1994. As Kutty was drawing pay in the scale of Rs.1200-2040 from an earlier date on ad hoc basis his pay on regular promotion to that scale was fixed at a higher level than that of the applicant.

and the applicant has claimed that his pay also should be stepped up at par with Kutty.

Mr. K.K. Shah for the applicant says that the applicant has made a clear averment that he is senior to Kutty when he joined as Typist. The applicant was senior to Kutty at the level of Typist and he refers to para 6.4 and contends that both were selected for the post of Stenographer in the scale of Rs.330-560 on the basis of selection held in 1984. According to him as per the seniority list, the applicant is shown as senior to Kutty. He says that the stand of the Railways in this regard is not consistent as in para 4 of the reply statement the respondents have stated that even though the applicant was senior to Kutty in 1975 position was reversed in the year 1984. Mr. Shah says that nothing has been produced by the Railways in support of their contention and his stand that he is senior to Kutty should be accepted. He brings out that Kutty has drawn more pay in the scale 330-560 as he had started working in the higher scale ^{from} an earlier period on ad hoc basis. When there was an appointment at the higher level to the scale of Rs.330-560 it was incumbent on the part of the respondents to have preferred the senior-most for such ad hoc promotion instead of a junior. He refers in this connection to a circular of the

(2)

Railways dated 11.8.1980 which brings out that the Railway Board has always held that the senior-most person available in the unit should normally be promoted on ad hoc basis and that such ad hoc arrangement should not be allowed to continue for long periods. Mr. Shah says that the action of the department in giving ad hoc promotion to Kutty in 1977 over-looking the applicant's claim is not in order and as the applicant is senior to Kutty, his pay should be stepped up. He says that failure to do so would amount to violation of Articles 14 and 16 of the Constitution of India.

4. Mr. Shevde for the respondents resists the O.A. He says that it is not quite clear as to what the applicant wants. He refers to the reply statement of the Railways stating that the applicant and Kutty were in different seniority units. He also states that the Railway Board circular that ad hoc promotion be given to the senior-most person does not automatically mean that ~~of pay~~ the applicant has got right for stepping up ^{of pay} _{at par} with the junior. He says that the conditions laid down for stepping up of pay have not been satisfied in the present case and the applicant is not entitled to the relief sought for. Mr. Shevde also states that the applicant

has filed the O.A. in 1991 and the same cannot be entertained as it is barred by limitation.

5. We have carefully considered the rival contentions. The stepping up is claimed in the present case essentially on the ground that Kutty is junior to the applicant and has drawn more pay in the scale of Rs.330-560 (revised scale Rs.1200-2040). It is also contended in the O.A. that the action of the respondents is contrary to the provisions of F.R. 22-C and Rule 2018 of the Indian Railway Establishment Code.

So far as the seniority of the applicant is concerned, there is some controversy. The Railways have admitted that the applicant was senior at the level of Typist to Kutty. But in the reply statement the respondents have stated that the applicant was posted as Stenographer in the scale of Rs.330-560 w.e.f. 26.11.80 and posted in the office of the Executive Engineer, Jamnagar in the Construction Department whereas Kutty was promoted to the post of Stenographer in the scale 330-560 purely ad hoc basis from 27.5.77 in the Rajkot Division. They claim that both are working in different units and far away from each other. However there is no specific answer to the point raised in para 6.4 of the O.A. that as per the seniority list

of Stenographers circulated through letter dated 11.4.84-Annexure A-3- the applicant is shown as senior to Kutty. We also find from the letter dated 29.6.1989 as at Annexure A-17 which rejects the applicant's request for stepping up, there is no mention that Kutty belongs to a different seniority unit.

The question then arises as to whether the applicant would be entitled to stepping up of pay even if it is held that he is senior to Kutty. Mr. Shah has argued that he has such a right and denial of such a right would be violative of Articles 14 and 16 of the Constitution of India.

The so-called anomaly of Kutty drawing more pay has arisen because Kutty started drawing ~~more~~ pay in the scale of Rs.330-560 from 1977 whereas the applicant came to that scale even on ad hoc basis only in 1980. The officiation of Kutty was ~~on~~ ad hoc and in accordance with Rule F.R. 26, the service rendered by Kutty in the higher scale counted for increments when he was regularly appointed to that scale. Since Kutty had been appointed on ad hoc basis about three years earlier he got additional increments and he was thus drawing more pay than the applicant. There is a

statement that the railways is at fault in giving Kutty ad hoc officiation in the higher scale in 1977 ignoring the applicant who is senior. There is also a mention that some Typists were called for selection in the year 1975 and the applicant did not take the selection and he alleges that only persons who are in the Establishment side of the Rajkot Division were called. Whatever may be the merit of the allegation, the fact remains that all these happened in 1975 and 1977 whereas the present O.A. has been filed in 1990. The applicant cannot now question the ad hoc promotion of Kutty in 1977 when he himself got such promotion only in 1980.

6. The circumstances in which the pay of a senior could be stepped up when on promotion he draws less pay than his junior has been dealt with in a number of Govt. of India orders. We may refer in this connection to the Govt. of India, Ministry of Finance O.M. dated 4th February 1966, Note 9 below Rule 7 of C.C.S. (R.P.) Rules 1997, Ministry of Finance O.M. dated 16th June 1989, Department of Personnel O.M. dated 15th February 1983 etc. etc. These are contained as Government of India Order No. 22 below F.R. 22 in Swamy's Compilation of F.Rs. and S.Rs. 14th Edition. They lay down the conditions

for stepping up of pay. It has been urged by the applicant that refusal to step up his pay is in violation of provisions of F.R. 22-C. The circumstances in which the pay can be stepped up are given in Government of India orders below F.R. 22-C, presently F.R. 22 I (a) (i) and are contained in the Ministry of Finance O.M. dated 4th February 1966. It stipulates certain conditions before stepping up is permissible. These are:-

" (a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;

(b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;

(c) The anomaly should be directly as a result of the application of FR 22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer. "

In the present case, the so-called anomaly has arisen because Kutty was drawing pay in the higher scale on ad hoc basis from an earlier date than the applicant and it is not on account of the operation of F.R. 22-C.

6-A The Full Bench of this Tribunal while considering the case of B.L. Somayajulu vs. The Telecom Commission and Others (ATC Full Bench Judgements 1994-96 page 190) has stated that

Stepping up can be made only on the basis of a legal right. We may refer to the Head Notes in this regard:-

" (A) Pay- Stepping up of- Stepping up can be granted only where there is a provision in law in that behalf, and only in accordance with that.

(B) Pay- Stepping up of- A claim for stepping up can be made only on the basis of a legal right and not on pervasive notions of equity or equality, unrelated to the context of statutory law.

(C) Pay- Stepping up of- Every claim must be based on an enforceable legal right- A right arises by conferment and not by comparison. (Para 5)

(D) Pay-Stepping up of- Held a jurisdiction in equity does not inhere in the Tribunal. (Para 5)

(E) Constitution of India, Article 14- Pay- Stepping up of- If wrong fixation of pay in the case of a senior by applying the principles of equality- Held that would be an instance using Article 14 to perpetuate illegality. (Para 7).

(F) Pay-Stepping up of- If a senior is denied what he is entitled to get, he must challenge that denial or that preferment extended to a Junior- Without challenging the wrong, he cannot claim a remedy from a wrong- He cannot acquiesce in a wrong, and make a gain from that wrong by a comparison. (Para 7)."

In the Judgement Order

the Full Bench has observed as follows:-

" The two questions that come into focus are:

(i) What are the circumstances under which stepping up can be allowed,

(ii) What is the basis on which stepping up can be claimed".

In para 10 of this order, it has answered these questions as follows:-

junior is to bring about a corresponding fixation in the case of a

" (a) Stepping up can be granted only where there is a provision in law in that behalf, and only in accordance with that; and

(b) a claim for stepping up can be made only on the basis of a legal right and not on pervasive notions of equity or equality, unrelated to the context of statutory law".

In the present case, there is no legal provision of statutory rule which gives the applicant the right for stepping up of pay. Stepping up of pay can be done in line of instructions which are recorded as Government of India orders below F.R.22-C and the applicant does not fulfil the conditions laid down therein.

We may also mention that the Hon'ble Supreme Court has gone into the question as to the circumstances in which the stepping up can be allowed in the case of Union of India vs. R. Swaminathan 1999 (1) SLJ 102. The Apex Court has referred to the provisions of Finance Ministry's O.M. dated 4th July 1966. It has also taken into account the O.M. from the Department of Personnel and Training dated 4.11.93 which inter alia says that increased pay drawn by a junior either due to ad hoc officiation/regular service rendered in the higher post for periods earlier than the senior cannot be an anomaly in the strict sense of the term. The Supreme Court also refers to the O.M. dated 4.11.93 which clarifies the instances where stepping up cannot be ^{given a} done. It says that stepping up cannot be done as an

automatic right.

We may refer to the Head Note:-

" **Head Note:**

FR 22 (1) (a) (i), Proviso to FR 22, Stepping up, Local Promotions- Respondents though senior were drawing lesser pay on promotion- CAT allowed stepping up- Stepping up is permissible only for 3 conditions given in the rule- In this case juniors had officiated in higher post from time to time on local basis and on final promotion increments for such local promotions got them the ~~was~~ higher pay- Held this is not an anomaly and does not attract stepping up- Hence appeal allowed.

(Para 10/11) ".

It would thus be clear that merely because the junior's had officiated in the higher post on local basis and on his promotion gets higher pay in that scale on account of increment would not entitle the senior to have his pay stepped up. The present case is squarely covered by the decision of the Hon'ble Supreme Court in Swaminathan's case referred to supra.

7. In the light of the foregoing discussion we hold that the applicant is not entitled to the relief sought for. The O.A. is dismissed with no orders as to costs.

A.S. Sanghavi
(A.S. Sanghavi)
Member (J)

V.Ramakrishnan
V.Ramakrishnan
Vice Chairman